

Columbia Law School Public Service Dinner

Ellen: Thank you for that lovely introduction. I have become very partial to Columbia Law School during my tenure as a judge, largely because of the efforts of Ellen, Columbia Law School=s greatest ambassador of good will. Ellen has integrated me into the law school community in a way I thought only my alma mater could ever achieve. Through Ellen, I have had a large number of wonderful law students and terrific law clerks work in my Chambers. Many of you are here tonight and I love any opportunity to spend time with you.

I have also had the privilege to attend a great number of events at this school and have always been welcomed warmly. I am particularly delighted, however, to be here tonight because public service has been such an important part of my own personal and professional life. Right out of law school, I worked in the Manhattan DA=s office for four and a half years. In private practice for the next eight years, I volunteered my time, at my firm=s expense, to a variety of public service organizations including the Board of Directors of the Puerto Rican Legal Defense and Education Fund, the Board of Directors of The State of New York Mortgage Agency, and the NYC Campaign Finance Board.

Obviously, in the last seven years, first as a district court judge and more recently as a circuit court judge, I have been involved in a quintessential public service role B attempting to interpret and apply the law for the great variety of people, organizations and companies that appear before me. As I have done my work, I have tried to figure out whether I am doing justice.

One benefit of the long delays in my confirmation processes to both the district and circuit court benches has been that I was given a considerable amount of time to think and reflect about the judicial process and its meaning. We lawyers first begin to think about this topic as we decide whether to apply to law school. We then think more about it while in law school. Yet, even then, the press of memorizing and learning case names, facts and legal principles often forces our interest in the philosophy of law to pale or be forgotten. Unfortunately, except for law students who enter academia, the remainder of us become pressed by the demands of our practice. Those demands then tend to shape the contours of our understanding of the word "justice".

Prosecutors become law enforcement advocates and defense attorneys become civil libertarians. The twain rarely meets, unless a prosecutor is arrested or a defense attorney becomes a crime victim -- then, their respective philosophies may quietly turn around.

There is no easy definition of justice that I can offer you which will magically liberate you from the gripping and narrowing tentacles of what will be your life experiences as lawyers. I tried during both my confirmation processes to define justice for myself and realized how complex an idea it was and how tied to the facts of each situation.

Moreover, in many respects, the courts and law are the most poorly suited institutions to render justice. In a court, the law commands a result, a result that leads to a winner and therefore a loser. The loser in a court battle often times feels aggrieved, particularly when a new rule of law is announced, when the envelop of the law is expanded in a new direction or simply when a human being feels the law has not appreciated their viewpoint or problem.

"Justice" is a complex concept with no easy definition.

Yet, not just lawyers but almost every person in our society is moved by that one word. It is a word embodied with a spirit that rings in the hearts of people. It is an elegant and beautiful word that moves people to believe that the law is something special.

Therefore, despite the difficulty in defining the word, those of us who choose the law as our profession are compelled to be forever vigilant in giving the concept of justice meaning and in regularly spending time in the pursuit of it.

I am not prepared to give you a working definition of justice. It is a concept I am now trying to define each day of my life and each day I test the parameters of my hypothesis against the great variety of situations I encounter. I offer some tentative observations, however, about the concept and how to go about pursuing it.

First, I am learning that to begin thinking about justice, you must constantly step out of the role you are in and not just listen to your adversaries but learn to respect and appreciate their perspectives. It is all too easy as a prosecutor to feel the pain and suffering of victims and to forget that defendants, despite whatever illegal act they have committed, however despicable their acts may have been, the defendants are human beings who have families and people who care for and love them. Appreciating this fact does not excuse reprehensible behavior but it at least opens the door to understanding, and that is a step toward justice. Equally, if you are a prosecutor, you must also appreciate and respect the importance and work of defense attorneys as defenders of our constitution and its promised rights to individuals and to our society.

Similarly, however, defense attorneys must extend their respect to and expand their appreciation of prosecutors and victims.

Prosecutors are protecting society=s interest against dangers that are real and often lethal. Those dangers cannot be minimized.

The ravages of the drug war, for example, have many victims, including the families of defendants.

Prosecutors and defense attorneys are not enemies; they are soldiers on the same side only with different roles. Both sides in the criminal system are equally necessary and equally important. The goal of the mission is the sameBto do justice. If you keep this in mind, the quagmires of ethical questions will become less difficult. Justice should not have a side. Justice is achieved when its practitioners do what is fair and humane under the rules established by law. You can not do justice unless you respect and appreciate the process that achieves it.

By the way, the idea of justice is not limited to criminal law practitioners. Civil practitioners must remind themselves daily that as advocates, you fall prey to believing that your client's position is the "right" one. To be the best advocate, however, you must remember to bring to your client a sense of impartiality that permits you not only to see the other side's position but to appreciate and respect it. You can never fully and properly assess a case unless you are willing to judge out of respect and not from automatic derision. The fact that some tort reform, for example, may be necessary should not obscure the reality that some people are injured, in some horrific ways, by the carelessness and neglect of others.

In our rush to Afix@ problems in our legal system, we must constantly balance the often competing needs of different segments of our society. Winning it all for one side or the other is not often the solution. Finding workable compromises, through balanced advocacy can often be the start of truly just lawyering.

Finally, civil practitioners also have a responsibility to ensure that they practice not only in a procedurally correct way, but in a fair way. Filing and serving a temporary restraining order on the eve of a holiday may be procedurally permissible but it is both inhumane and unfair.

In short, you can not begin pursuing justice unless you fully appreciate how difficult it is to do. To be fair, to seek truth is not easy. It is the hardest task you face. Justice asks you not only for a fair result but for a commitment that you will pursue justice fairly in every step you take as a lawyer.

A second component of the concept of justice I have grown to understand is that justice can only be fairly done when the financial ability to retain lawyers does not control access to, or success, in court. Unfortunately, today, government does not have the resources to fund the needs of the poor for legal representation particularly in civil cases. Accordingly, the legal profession depends on the pro bono contributions of its members. We need you to continue giving of your time as lawyers to take pro bono cases.

I know I am speaking to the converted in the room. I know that you, the students and lawyers invited to this dinner, are people who have demonstrated your commitment to public service. I hope that the spirit that has moved you to your current commitment keeps ablaze during your entire careers. As you grow busier in your professional lives, as you begin to have and raise children, you must bear in mind that there can be little worth to our profession or our individual work as lawyers unless we ensure that the poorest and most disenfranchised of our society are given full access to our legal system. A legal system accessible to the rich only is a system that will lose its moral force and will cease to be symbol of justice.

All of you here who do public service work deserve congratulations for the good you have done and for the good you shall do. You bring honor to the profession of which you are or will become a part and I hope you feel pride in the good you bring to this world. Doing good work is a first step to doing justice. Your continued challenge will be to do it with a sense of decency and fairness throughout your lives and in all the career choices you make. I expect, given the nature of the people here tonight and your already demonstrated commitment to public service, that I will not be disappointed. I expect that throughout my life I will have the benefit of seeing many of you before me, fighting B and sometimes winning C the good fight. Thank you for letting me share your evening with you and thank you all for all you have done and will do on behalf of justice.